

**United States Bankruptcy Court
WESTERN DISTRICT OF WISCONSIN (MADISON)**

In re)	
William M Webster)	Case No. 3-23-11173-cjf
Laura L Webster)	
)	
Debtors)	
)	Chapter 13
Address)	
<u>2339 Monroe St, Madison, WI 53711</u>)	
)	
Last four digits of Social Security or Individual)	Judge Catherine J. Furay
Tax-payer Identification (ITIN) No(s) (if any):)	
<u>7883, 2715</u>)	

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE
ALTERNATIVE TO DISMISS FOR FAILURE TO MAKE
POST-PETITION PLAN PAYMENTS**

Citizens Bank, N.A. f/k/a RBS Citizens N.A. the current mortgagee of record, its successors, servicing agents and/or assignees (hereinafter collectively the “Movant”), has filed papers with the court for an order for relief from the automatic stay or in the alternative an order dismissing the case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion then, **within 14-days of the date of this notice**, you or your attorney must:

File with the court a written objection to the motion and a request for a hearing at:

Clerk, U.S. Bankruptcy Court
Western District of Wisconsin
120 North Henry Street, Room 340
Madison, WI 53703-2559

If you mail your request and objection to the court for filing, you must mail it early enough so the court will receive it within 14-days of the date of this notice.

You must also send a copy to:

Matthew Comella
Codilis, Moody & Circelli, P.C.
15W030 North Frontage Road, Suite 200
Burr Ridge, IL 60527

Mark Harring
Chapter 13 Trustee
122 West Washington Ave., Suite 500
Madison, WI 53703-2578

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: December 22, 2023

Signature: /s/ Matthew Comella

Shawn R. Hillmann, WI Bar No. 1037005
Matthew Comella, WI Bar No. 1096303
Peter C. Bastianen, IL Bar No. 6244346
Joel P. Fonferko, IL Bar No. 6276490
matthew.comella@codilis.com
Codilis, Moody & Circelli, P.C.
15W030 North Frontage Road, Suite 200
Burr Ridge, IL 60527
(414) 775-7700 Phone
50-22-00718

NOTE: This law firm is a debt collector.

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN (MADISON)**

In re:)	Case No. 3-23-11173-cjf
William M Webster)	
Laura L Webster)	Chapter 13
)	
Debtors)	Judge Catherine J. Furay

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE
ALTERNATIVE TO DISMISS FOR FAILURE TO MAKE
POST-PETITION PLAN PAYMENTS**

NOW COMES Citizens Bank, N.A. f/k/a RBS Citizens N.A. (hereinafter “Movant”), by and through its attorneys, Codilis, Moody & Circelli, P.C., and moves this Honorable Court pursuant to 11 U.S.C §362(d) for an Order granting Movant relief from the automatic stay, or alternatively for entry of an order dismissing the case pursuant to 11 U.S.C §1307, and in support thereof states as follows:

1. That the Debtors are indebted to Movant for which the Movant claims a valid security interest in the property commonly known as **2339 Monroe St, Madison, WI 53711** (hereinafter “Subject Property”). A copy of the Note and Mortgage are attached hereto, and their contents are incorporated herein by reference;

2. That enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtors filing this petition on 07/10/2023;

3. That the Chapter 13 plan herein provides for the cure of the default of said mortgage and maintenance of current payments during the pendency of the proceeding;

4. That pursuant to the plan, the Debtors are to disburse the current monthly mortgage payments directly to Movant beginning with the first payment due after the filing of the Chapter 13 Bankruptcy (subject to periodic adjustment due to change in escrow);

5. Movant is entitled to relief from the automatic stay under 11 U.S.C. §362(d) for the following reasons:

- a. As of 12/11/2023, the Debtors are past due for the 10/01/2023 post-petition payment and all amounts coming due since that date. Any payments received after this date may not be reflected in this default;
- b. As of 12/11/2023, the post-petition monthly mortgage payments have not been received as required by the terms of the plan in this case and the Movant's records reflect that the following post-petition arrearage has accrued:

# of Missed Mortgage Payments	From	To	Monthly Payment Amount	Total Amount Missed
3	10/01/2023	12/01/2023	\$2,084.14	\$6,252.42
Less post-petition partial payments (suspense balance)				(\$0.00)
POST-PETITION ARREARAGE				\$6,252.42

- c. As of 12/11/2023, the total post-petition default through and including 12/01/2023 is \$7,501.42 which includes post-petition fees/costs in the amount of \$1,249.00. Any payments received after this date may not be reflected in this default;
- d. On 01/01/2024, the default will increase to \$9,585.56 and will continue to increase as additional amounts become due;

4. That the estimated fair market value of the property per Debtors' schedules was approximately \$460,000.00;

5. As of 12/11/2023, the estimated payoff amount was \$296,801.79;

6. That sufficient grounds exist to dismiss this proceeding under 11 U.S.C. §1307 as:
- a) debtors' failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes an unreasonable delay that is prejudicial to moving creditor and the case should be dismissed under §1307(c)(1);

- b) debtors' failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes "cause" and the case should be dismissed under the general provisions of 11 U.S.C. §1307;
- c) the default in post-petition mortgage payments constitutes a material default under paragraph C of the Chapter 13 plan and case should be dismissed under §1307(c)(6);

7. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding which have been included in the calculation of any default figures quoted herein, including:

\$1,050.00	for Preparation of Notice and Motion for Relief from the Automatic Stay, and prosecution of same
\$199.00	for Court filing fee

8. The Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, and Movant requests this Court so order.

WHEREFORE, Movant prays this Court enter an Order pursuant to 11 U.S.C. §362(d) modifying the automatic stay as to Movant, or alternatively, for entry of an order dismissing the case pursuant to 11 U.S.C. §1307, that Movant's legal fees and/or costs associated with this motion be approved, that any order entered pursuant to this motion be effective immediately upon its entry and for such other relief as may be just and equitable.

Dated this December 22, 2023.

Respectfully Submitted,

Codilis, Moody & Circelli, P.C.

By: /s/ Matthew Comella
Attorney for Movant

Shawn R. Hillmann, WI Bar No. 1037005

Matthew Comella, WI Bar No. 1096303

Peter C. Bastianen, IL Bar No. 6244346

Joel P. Fonferko, IL Bar No. 6276490

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William M Webster)	
Laura L Webster)	Chapter 13
)	
Debtors)	Judge Catherine J. Furay

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice and Motion upon the parties listed below, as to the Chapter 13 Trustee, U.S. Trustee and Debtors' Attorney via electronic notice on December 22, 2023 and as to the Debtors by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on December 22, 2023.

Mark Haring, Chapter 13 Trustee, 122 West Washington Ave., Suite 500, Madison, WI 53703-2578
by electronic notice through ECF
William M Webster, Laura L Webster, Debtors, 2339 Monroe St, Madison, WI 53711
Noe Joseph Rincon, Attorney for Debtors, 26 Schroeder Court, Suite 300, Madison, WI 53711
by electronic notice through ECF
U.S. Trustee's Office, 780 Regent Street, Suite 304, Madison, WI 53715
by electronic notice through ECF

Codilis, Moody & Circelli, P.C.

By: /s/ Matthew Comella
Attorney for Movant

Shawn R. Hillmann, WI Bar No. 1037005
Matthew Comella, WI Bar No. 1096303
Peter C. Bastianen, IL Bar No. 6244346
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